IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.128 OF 1988
WITH
SPECIAL CIVIL APPLICATION NO.5771 OF 1990
TO
SPECIAL CIVIL APPLICATION NO.5794 OF 1990
WITH
SPECIAL CIVIL APPLICATION NO.10619 OF 1994

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

MANAGER, PACKART GLASS & ORS.
VERSUS
D.D.DIGHE & ORS.

Appearance:
(In Special Civil Applications No.128 of 1988, and Special Civil Applications No.5771 to 5794 of 1990)
MR KS NANAVATI for Petitioners
MR MS MANSURI for Respondents

(In Special Civil Applications No.10619 of 1994)

MR MS MANSURI for Petitioners
MR KS NANAVATI for Respondents

Coram: S.K. Keshote,J
Date of decision: 7.10.1997

ORAL JUDGMENT

#. The first Special Civil Application, being Special Civil Application No.128 of 1988 has arisen from the Award dated 23rd March 1983 passed in Complaint (IT) No.98 of 1984, therein the dispute was raised by respondent-workmen that the age of superannuation of the employees of the category to which they belonged should be 60 years and not 58 years.

#. The second set of Special Civil Applications being Special Civil Applications No.5771 of 1990 to 5794 of 1990 have arisen from the common order passed in Complaint (IT) No.73 of 1988 dated 24th April 1990 by the Industrial Tribunal, Vadodara. Under this award, the complaints filed by respondent-employees have been consolidated and the same have been decided by the common award.

#. The last petition, i.e. Special Civil Application 10619 of 1994 has arisen from the common award passed in Complaint (IT) No.13 of 1990 dated 15.1.94 by the Industrial Tribunal, Vadodara, under which number of complaints filed by petitioner herein have been decided. In these two sets of petitions also, the dispute pertains as to what should be the retirementary age of the class of employees to which the respondents in the first set and the petitioners in the last petition belong, i.e. whether the retirementary age of this class of employees should be 60 years or 58 years.

#. As a common question of facts and law has arisen in all these Special Civil Applications, the same are being taken up for hearing together and are being decided by this common order.

#. The learned counsel for the parties raised manifold contentions in these Special Civil Applications but after hearing them as I am of the considered opinion that the matters deserve to be sent back to the Industrial Tribunal, Vadodara, for fresh decision, I do not consider it to be necessary to advert to all those contentions and further to give out the facts of all these cases in detail. The facts are being given in nutshell to the

extent where they are necessary for deciding the matter.

#. In Special Civil Application No.128 of 1988, the employee, Dattatray Dwarkanath Dighe has filed a complaint under section 33-A of the Industrial Disputes Act, 1947, before the Industrial Tribunal, Vadodara, which was registered as Complaint (IT) No.98 of 1984 and the grievance has been made therein that the Model Standing Orders are applicable to his case and therefore he is entitled to continue in service of the Company till he attains the age of 60 years but still the Company has retired him at the age of 58 years and which act of the Company amounts to change in his service conditions and that it could not be affected pending reference relating to the conditions of service. At that time, References (IT) No.612 of 1984, 204 of 1984, and 234 of 1984 respectively were pending before the Industrial Tribunal, Vadodara. The Industrial Tribunal, Vadodara, under its impugned award dated 23rd March 1987, held that the employee therein was entitled to be continued in service of the Company till he attains the age of 60 years and therefore the Company should pay wages and allowances to him as if he was in service after his retirement for a period of two years, i.e. upto the age of 60 years. To adjudicate the dispute as raised, the Industrial Tribunal, Vadodara, has framed three points for consideration, and the points No.1 and 2 were replied in affirmative. The points No.3 related to relief clause. These points are as under;

(i) Whether the complainant falls within the definition of `workman'?

(ii) Whether the retirement age of 60 years as provided by the Standing Orders is applicable to the complainant ?

(iii) What reliefs the complainant is entitled to? And if yes, what?

#. In the second set of the Special Civil Applications, 24 complaints have been filed by workmen of Synbiotics Ltd., Sarabhai Chemicals, Sarabhai Common Services, S.G. Pharmaceuticals, under section 33-A of the Industrial Disputes Act, 1947, because of pending References (IT) Nos.11, 12, 13, & 14 of 1986 between the parties. In these complaints, the grievance of the complainants were also that the age of retirement should have been 60 years and not 58 years and as such, the Company has committed breach of service conditions pending reference between the parties. In these matters, the Industrial Tribunal

has framed four points for consideration, which are as under:

(i) In the first instance, whether the complainants are `workmen'?

(ii) Whether the complainants are concerned `workmen' in the reference stated in the complaints?

(iii) Initially what was the condition of retirement age in the service conditions of the complainants?

(iv) Whether any change is made in such conditions?

#. In these matters, the Company has given a Purshis Ex.45 and it has given up the dispute that the complainants are not `workmen'. In view of this Purshis of the Company, the Industrial Tribunal, Vadodara, has not considered it necessary to discuss this point and it held that all the complainants are `workmen'.

#. The third case, i.e. Special Civil Application which has arisen from the References (IT) Nos.10 to 15 of 1986, in which the complainants therein filed complaints under section 33-A of the Industrial Disputes, Act 1947, and there also the dispute has been raised regarding the age of retirement of that category of employees.

##. In the second set of petitions arising out of the award passed in Complaint (IT) No.73 of 1988, the Industrial Tribunal, Vadodara, held that the retirement age of this category of employees should be taken to be 60 years and the Company shall not retire the complainants of these complaints till they attain the age of 60 years.

##. In the last Special Civil Application being No.10619 of 1994, which has arisen from References (IT) Nos.10 to 15 of 1986, the Industrial Tribunal, Vadodara, has taken a view that the retirement age of this class of employees is 58 years and as such, all the complaints were rejected.

##. During the course of arguments, the learned counsel for the parties have given out that there is yet another reference being Reference (IT) No.206 of 1988 pending before the Industrial Tribunal, Vadodara, and there again the dispute is regarding the age of retirement of the

category of the employees of the same category to which the employees who are parties to these petitions.

##. The parties are not at variance that initially all these employees were taken in employment of these Companies in the category of `workmen', but later on under the agreement with the Union, they have been taken up by the management in consolidated grade and the contention of the Company before the Industrial Tribunal, Vadodara, was that they are not `workmen'. However, the Company in one set of cases, as stated earlier, has given up the contention that these persons are not `workmen' and as such, this point no more now remains in dispute. However, still the point which survives for consideration is what should be the age of retirement of this class of employees. Both the parties have relied upon the Model Standing Orders, awards and settlements in support of their respective cases, i.e. in the case of workmen, on Model Standing Orders as well as some awards of the Tribunal, and in the case of Company and its management, on some awards of the Tribunals as well as agreements of the employees themselves.

##. At this stage, reference is necessary to be made to the Judgment of this Court given in Special Civil Application No.12927 of 1994 decided on 12.12.94. There, the petitioner-Company challenged the order of the Industrial Tribunal, Vadodara, passed on 10.1.1994 in Ref.(IT) No.161 of 1989 directing the petitioner-Company to reinstate the respondent-employee therein who was sought to be retired at the age of 58 years as there was violation of provisions of section 33(2)(a) of the Industrial Disputes Act, 1947, with arrears of wages. That was also an employee of the category to which the employees who are parties in these matters belong. In that case, the Industrial Tribunal, Vadodara, has taken a view that in absence of mention of any age of retirement in the contract of employment and in view of the Model Standing Orders adopted by the Company, the Model Standing Orders became applicable. According to the Model Standing Orders, the age of retirement was 60 years. This Judgment of the Tribunal has been upheld by this Court and this Court has approved the finding of the Tribunal that in absence of any lawful agreement, settlement or award, the retirement age prescribed in the Model Standing Orders could not have been reduced to 58 years from 60 years. In the last Judgment of the Tribunal wherein the complaints filed by the employees under section 33-A of the Industrial Act, 1947, have been dismissed, the Tribunal has not referred, what to say to consider, its own awards/orders made in earlier

proceedings. Not only this, the award of the Industrial Tribunal, Vadodara, dated 10.1.94, in Ref.(IT) No.161 of 1989, has also not been referred. So there are two conflicting Judgments of the Tribunal on a point common in these proceedings. The learned counsel for the employees workmen contended that this Court may decide these matters. However, in the second set of complaints, which has been dismissed by Industrial Tribunal, Vadodara, I find from reading of the Judgment that all those previous Judgments have not been referred and evidence have also not been discussed. The learned counsel for the employees further contended that this Court's decision is there under which the award given regarding the age of retirement of this class of employees to be taken to be 60 years has been affirmed and as such, this Court may decide these matters. The Judgment of this Court, reference of which has been made, has no doubt taken this view, but looking to the conflicting decisions of the Industrial Tribunal, Vadodara, as well as the limitation of this Court to enter in the area of appreciation of evidence etc., I consider it to be more appropriate and in the larger interest of the parties that the Tribunal has to apply its mind afresh in the matter after taking into consideration the evidence produced by the parties as well as the decision of this Court. It is true that in these matters, evidence has been recorded of both the parties separately. The conflicting decisions have resulted for the reason that these matters in which identical issues were raised have not been taken up together. Be that as it may. The Tribunal shall reconsider all these matters after considering the evidence which have been produced in all these matters, and thereafter it may have its own decision on the question what should be the retirement age of the categories of the employees to which the employees herein belong.

##. In these cases, a point has been raised as to whether the parties should be allowed to produce further evidence or not. The learned counsel appearing for the Companies has not insisted for producing any further evidence but the learned counsel for the employees/ workmen insists for producing further evidence. I have read the awards which have been passed in these three matters and I am of the considered opinion that sufficient evidence has been produced on all the points raised in these matters by both the parties. Apart from this, both the parties had sufficient opportunities to produce their evidence and it is not grievance of either of the parties that the Tribunal has not afforded them

full opportunity to produce the evidence. Taking into consideration this aspect of the matter, I do not consider it to be a fit case where the parties should be given opportunity to produce further evidence. The matters have to be decided only on the basis of whatever evidence which has been produced in these matters, by the parties. Moreover, this Court is remanding these matters to the Tribunal only on the ground that there are two conflicting decisions of the Tribunal on the same point and for the purpose of reconsidering the two decisions, and as such, the matters have to be decided afresh on the basis of whatever material and evidence which has been produced by both the parties. It is not the case where remand of the matters has become necessary for some other reason, i.e. sufficient opportunity has not been given to the parties to produce evidence or some material evidence has not been produced by the parties despite of giving them opportunity and this Court has considered that now they have to be given opportunity to produce the same, etc. So on this ground also, I do not find any ground in the present case to permit either of the parties to produce any further evidence in these matters.

##. In the result, the awards passed in all these three sets of matters by the Industrial Tribunal, Vadodara, are quashed and set aside and the Tribunal is directed to restore these complaints to their original numbers and to decide the same afresh after giving opportunity of hearing to both the parties and after considering the evidence which had already been produced by them in these matters. All these matters should be decided by the Tribunal together. These matters are old one and as such, it is expected of the Tribunal to take all care to see that the same are being disposed of as early as possible, but not later than six months from the date of receipt of writ of this order. It is made clear that none of the parties shall have right to produce any further evidence, documentary or oral, and the Tribunal should decide these matters on the basis of whatever evidence which had already been produced by both the parties. However, the Industrial Tribunal, Vadodara, shall be at liberty to consider and to take on record, if it is not on record of these proceedings, the award dated 10.1.94 in Ref.(IT) No.161 of 1989 and the Judgment of this Court in Special Civil Application No.12927 of 1994 dated 12.12.94.

##. Rule made absolute in these Special Civil Applications in aforesaid terms with no order as to costs.

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(sunil)